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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92054165
Party	Plaintiff Eyal Balle
Correspondence Address	SUSAN L HELLER GREENBERG TRAURIG LLP 2450 COLORADO AVENUE, SUITE 400E SANTA MONICA, CA 90404 UNITED STATES hellers@gtlaw.com
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Date	03/28/2012
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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EYAL BALLE,

Petitioner,

v.

CHILDREN’S APPAREL NETWORK, LTD.,

Registrant.  
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Cancellation No. 92054165

**PETITIONER’S MOTION FOR SUMMARY JUDGMENT**

Petitioner Eyal Balle (“Petitioner” or “Balle”), by its undersigned counsel, hereby moves for an entry of judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”) and 37 C.F.R. § 2.127 as there are no genuine issues of material fact remaining for trial and Balle is entitled to judgment as a matter of law.

**I. INTRODUCTION AND FACTUAL BACKGROUND**

Petitioner Eyal Balle, a California resident, has been manufacturing and designing women’s footwear for almost two decades. One of Balle’s most successful endeavors has been his line of women’s shoes sold under his REBELS mark. Balle has been using his mark, REBELS, in commerce, on shoes since at least as early as October 1, 1993. In addition, Balle has used the Trademark REBELS on promotional items from time to time over the years, including on T-Shirts, Backpacks, Tote bags, and CD cover. *See* accompanying declaration of Eyal Balle, (“Balle Dec.”), at ¶ 2, Exhibit A.

Registrant Children’s Apparel Network, Ltd. (“Registrant” or “CAN”) is a New York corporation that produces fashion apparel and licensed merchandise. CAN owns a federal trademark registration for the word mark BABY REBELS, issued on June 29, 2010, based on a

first use date of May 2009.<sup>1</sup> The BABY REBELS mark has been used on various types of clothing and accessories for infants. *See* Heller Dec., Exhibit F (U.S. Trademark Registration Certificate for Registration No. 3,811,758). CAN is also the owner of the word plus design mark LITTLE REBELS and claims a date of first use in commerce of October 23, 1987 for that mark. *See* Heller Dec., Exhibit J (U.S. Trademark Registration Certificate for Registration No. 1,523,581). The LITTLE REBELS mark is for use in connection with various types of boys' and girls' clothing. *See Id.*

Balle seeks to Cancel U.S. Reg. No. 3,811,758 for CAN's BABY REBELS mark. There is no dispute that Balle has priority of use. Moreover, the United States Patent and Trademark Office ("USPTO") has already found and CAN has already agreed that there is a likelihood of confusion between Balle's REBELS mark and CAN's BABY REBELS mark and CAN has admitted that its goods, primarily clothing, are related to Balle's goods, primarily shoes.

CAN's registration of the BABY REBELS mark is damaging Balle because it is preventing Balle from registering his own REBELS mark although he has priority of use, and is allowing CAN a prima facie exclusive right to use the BABY REBELS mark to which it simply is not entitled. Hence, the Board should grant Balle's motion for summary judgment and enter judgment against CAN.

## **II. UNDISPUTED MATERIAL FACTS**

The following facts are material to this Motion and are undisputed:

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<sup>1</sup> CAN has since contended that the correct first use date is March or April of 1995. *See* accompanying declaration of Susan Heller, ("Heller Dec."), Exhibit B (Answer And Affirmative Defense To Petition For Cancellation) ("Answer"), ¶ 2 ("should instead read at least as early as March 1995"); *see also* Heller Dec, Exhibit E, (Registrant's Responses And Objections To Petitioner's Second Set Of Interrogatories To Registrant), ("ROG Set 2 Responses"), Interrogatory No. 11 (asking CAN to "identify the date you first used the BABY REBELS mark in interstate commerce." "[CAN] responds as follows: at least as early as April 12, 1995."). This assertion is immaterial, however, because Balle's use in commerce of his REBELS mark is October 1, 1993, and Balle therefore has priority regardless of whether CAN first used its mark in May 2009 as reflected in its registration, or its newly asserted of March or April 1995.

- On June 29, 2010, the USPTO issued Registration No. 3,811,758 to CAN for BABY REBELS (the “Registration”), in connection with “clothing and accessories for infants, namely, caps, cardigans, creepers, denim jackets, hats, jackets, jeans, jerseys, overalls, pants, pullovers, shirts, shortalls, shorts, socks, sweatpants, sweatpants, sweat shirts, sweaters, t-shirts, tank-tops, vests; jacket sets comprised of jackets, pants and shirts; overall sets comprised of overalls and shirts; shirt sets comprised shirts and pants; sweater sets comprised of sweaters, pants and shirts” in Class 25. *See Heller Dec.*, Exhibit F (U.S. Trademark Registration Certificate for Registration No. 3,811,758). The registration is based on a claimed first use in commerce date of May 2009.<sup>2</sup> *See Id.*
- Balle owns common law rights to the REBELS mark for use with footwear that dates back to 1993. *See Balle Dec.*, at ¶ 2. On November 22, 1993, Balle filed an application to register REBELS for “clothing, namely footwear” in Class 25 (the “Original REBELS Application”). On April 9, 1996, the USPTO issued Registration No. 1,966,107 to Balle for REBELS (the “REBELS Registration”). *See Heller Dec.*, Exhibit G (USPTO TARR status information for Registration 1,966,107). The USPTO did not cite LITTLE REBELS during the prosecution of the Original REBELS Application. *Balle Dec.*, at ¶ 3. Moreover, CAN never filed an opposition or cancellation against the REBELS Registration. *Id.* The REBELS and LITTLE REBELS marks co-existed for many years. *Id.* However, due to an inadvertent error, the REBELS Registration was canceled. *Id.*; *see also Heller Dec.*, Exhibit G
- On July 16, 2009, Balle filed an application to register REBELS for “footwear” in Class 25 (the “Application”). That Application was assigned Serial No. 77/783,154. *See Heller Dec.*, Exhibit H (U.S. Trademark Application for Serial No. 77/783,154). Balle

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<sup>2</sup> It is undisputed that Balle has priority of use. As previously stated, CAN’s contention that the correct first use date is March or April of 1995 is immaterial because applying either the 2009 or 1995 date, Balle’s REBELS mark, with a first use in commerce date of October 1, 1993, has priority of use.

filed his Application under Section 1(a) of the Lanham Act claiming first use of his REBELS mark in commerce at least as early as October 1, 1993 and Balle has been using the REBELS mark continuously since that time. Balle Dec., at ¶ 4.

- On December 15, 2010, the USPTO issued an Office Action rejecting Balle's Application for REBELS based on CAN's Registration. The USPTO determined there was a likelihood of confusion between the REBELS and BABY REBELS marks. *See Heller Dec.*, Exhibit I (U.S. Trademark Office Action for Serial No. 77/783,154). Once again, the USPTO did not cite LITTLE REBELS in the Office Action.
- While "BABY" is disclaimed in the BABY REBELS registration, LITTLE is not disclaimed in the LITTLE REBELS registration. *See Heller Dec.*, Exs. F, K (U.S. Trademark Registration Certificate for Registration Nos. 3,811,758; 1,523,581).
- Over the course of pleading and discovery, CAN has made several admissions relevant to the Board's analysis. CAN has admitted that the BABY REBELS and REBELS marks are similar in sound, appearance and meaning, and are confusingly similar. *Heller Dec.*, Exhibit B (Answer) ¶ 7; *see also Heller Dec.*, Exhibit C (RFA Set 1 Responses) Request No. 2 and Response No. 2. CAN has likewise admitted that the goods in the CAN's Registration are also related to the goods in Balle's application, *see Id.*, (RFA Set 1 Responses) Request No. 3 and Response No. 3; and that CAN did not use its BABY REBELS mark prior to 1995. *See Id.*, Exhibit D (RFA Set 2 Responses) Request No. 5 and Response No. 5.

### **III. ARGUMENT**

#### **A. Summary Judgment Standard.**

Proceedings before the Board are governed by Federal Rules of Civil Procedure. The Board may grant summary judgment when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. Civ R. P. 56(c); 37 C.F.R.

§ 2.116(a) (1991); *National Cable Television Ass’n, Inc. v. American Cinema Editors, Inc.*, 937 F.2d 1572, 1576 (Fed.Cir.1991). In evaluating a motion for summary judgment, the Board must look beyond the pleadings and assess the proof to determine whether there is a genuine need for trial. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986), *cert. denied*, 481 U.S. 1029 (1987). The party moving for summary judgment bears the initial burden of specifically identifying those portions of the pleadings and discovery, together with any affidavits, which it believes demonstrates the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986), *cert. denied*, 484 U.S. 1066 (1988).

Summary Judgment is appropriate in a trademark proceeding where, as here, there are no genuine issues of material fact to be tried. *See, e.g., Pure Gold, Inc. v. Syntex (U.S.A.), Inc.*, 222 U.S.P.Q. 741 (Fed. Cir 1984) (affirming the TTAB’s grant of summary judgment in a TTAB proceeding and explaining that summary judgment serves judicial economy and the public interest by avoiding the time and expense of a full trial).

**B. There is No Genuine Issue of Material Fact That Balle Has Priority of Use, and CAN’s BABY REBELS Mark Should Be Cancelled.**

**1. CAN’s BABY REBELS Mark Should Be Cancelled.**

A person “who believes that he is or will be damaged ... by the registration of a mark on the principal register” may petition to cancel the registration under 15 U.S.C. § 1064 (2000). To obtain cancellation of the registration, the petitioning party must show (1) standing and (2) valid grounds for cancellation. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 945 (Fed.Cir. 2000). Standing requires only that the petitioner have a “real interest” in the cancellation proceeding. *Int’l Order of Job’s Daughters v. Lindeburg & Co.*, 727 F.2d 1087, 1092 (Fed.Cir.1984). In most settings, a direct commercial interest satisfies the “real interest” test. *Cunningham*, 222 F.3d at 945. Unless an incontestable mark is at issue (which is not the case here), any reason that

would have precluded registration in the first instance suffices as a valid ground for cancellation. *Id.*, at 946.

First, Balle has a reasonable belief that he will be damaged and thus has standing. *See Cunningham*, 222 F.3d at 945 (“[s]tanding is the more liberal of the two elements and requires only that the party seeking cancellation believe that it is likely to be damaged by the registration.”). A belief in likely damage can be shown by establishing a direct commercial interest. *See International Order*, 727 F.2d at 1092 (finding sufficient the petitioner’s production and sale of merchandise bearing the registered mark); 3 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* §§ 20:7, 20:46 (4th ed. 1996 & Supp. 1999) (“McCarthy”). Balle owns common law rights to the REBELS mark for use with footwear that date back to 1993. Balle Dec., ¶ 2. Specifically, Balle first used his REBELS mark in commerce at least as early as October 1, 1993 and has been using its REBELS mark continuously since that time. *Id.*, ¶ 3. Thus, products sold under the REBELS mark suffice to establish Balle’s direct commercial interest and its standing to petition for cancellation of CAN’s BABY REBELS mark. *See International Order*, 727 F.2d at 1092. Moreover, the USPTO refused Balle’s registration of his REBELS mark on the basis of CAN’s registration of its BABY REBELS mark. *See Heller Dec.*, Exhibit I (December 15, 2010 U.S. Trademark Office Action for Serial No. 77/783,154).

Second, a valid ground for cancellation is section 2(d) of the Lanham Act, which precludes registration when a mark is likely to cause confusion with a mark or trade name previously used or registered by another. 15 U.S.C. § 1052(d) (2000); *Cunningham*, 222 F.3d at 946; *see also* McCarthy, § 20:53 (calling § 2(d) the most common ground for cancelling a mark). Thus, a party petitioning for cancellation under section 2(d) must show that it had priority and that registration of the mark creates a likelihood of confusion. As discussed below, both of these elements are satisfied.

## 2. CAN Admits Balle Has Priority.

A trademark owner may file a petition to cancel another's registration if it had made prior use of the registered mark. 15 U.S.C. § 1064; *West Florida Seafood v. Jet Restaurants*, 31 F.3d 1122, 1125 (Fed. Cir. 1994) (“[a] party claiming prior use of a registered mark may petition to cancel the registration on the basis of such prior use pursuant to section 14 of the Lanham Act.”); For inherently distinctive marks, such as REBELS, ownership is governed by priority of use. *See Hydro-Dynamics, Inc. v. George Putnam & Co., Inc.*, 811 F.2d 1470, 1473 (Fed. Cir. 1987) (“trademark rights in the United States are acquired by such adoption and use, not by registration.”); *see also* McCarthy, § 16:4 (“the first to use a designation as a mark in the sale of goods or services is the ‘owner’ and the ‘senior user.’”). “To establish priority, the petitioner must show proprietary rights in the mark that produce a likelihood of confusion. These proprietary rights may arise from a prior registration, prior trademark or service mark use, prior use as a trade name, prior use analogous to trademark or service mark use, or any other use sufficient to establish proprietary rights.” *Kohler Co. v. Baldwin Hardware Corp.*, 82 U.S.P.Q.2d 1100 (T.T.A.B. 2007).

It is undisputed that Balle has priority over CAN. First, Balle owns common law rights to the REBELS mark for use with footwear. Balle Dec., ¶ 2. Balle first used its REBELS mark in commerce at least as early as October 1, 1993 and has been using its REBELS mark continuously since that time. *Id.* CAN did not use its BABY REBELS mark in commerce until well after Balle's use of the REBELS mark. *See* Heller Dec., Exhibit F (U.S. Trademark Registration Certificate for Registration No. 3,811,758) (showing first use date of May 2009).<sup>3</sup>

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<sup>3</sup> CAN admits that CAN did not use its BABY REBELS mark prior to 1995. *See* Heller Dec., Exhibit D (RFA Set 2 Responses) Request No. 5 and Response No. 5. Although CAN's BABY REBELS registration cites a first use date of May 2009, CAN now contends that its first use date for the BABY REBELS mark was actually March or April of 1995. *See Id.*, Exhibit B (Answer) ¶ 2 (“should instead read at least as early as March 1995”); *see also Id.*, Exhibit E, (ROG Set 2 Responses), Interrogatory No. 11 (asking CAN to “identify the date you first used the BABY REBELS mark in interstate commerce.” “[CAN] responds as follows: at least as early as April 12, 1995.”). As previously discussed, however, the exact date is immaterial since Balle's first use in commerce of his REBELS mark predates all of CAN's asserted first use dates for its BABY REBELS mark.



Second, CAN admits that the goods in the CAN's Registration are also related to the goods in Balle's application. *See* Heller Dec., Exhibit C (RFA Set 1 Responses) Request No. 3 and Response No. 3. Therefore Balle's REBELS mark has priority over CAN's BABY REBELS mark.

**3. CAN Has Agreed With The USPTO's Determination Of A Likelihood Of Confusion.**

In connection with Balle's attempt to register his REBELS mark, the USPTO cited CAN's registration against Balle, and found that "there exists a likelihood of confusion between applicant's proposed mark, REBELS, for "Footwear" and ... [] BABY REBELS (Reg. No. 3811758), for "[c]lothing and accessories for infants, namely, caps, cardigans, creepers, denim jackets, hats, jackets, jeans, jerseys, overalls, pants, pullovers, shirts, shortalls, shorts, socks, sweat pants, sweat shirts, sweaters, t-shirts, tank-tops, vests; Jacket sets comprised of jackets, pants and shirts; overall sets comprised of overalls and shirts; shirt sets comprised of shirts and pants; sweater sets comprised of sweaters, pants and shirts." *See* Heller Dec., Exhibit I (December 15, 2010 U.S. Trademark Office Action for Serial No. 77/783,154).

CAN has already agreed with the Board's determination. *See Id.*, Exhibit B, (Answer) ¶ 7 ("[CAN] admits that the BABY REBELS and REBELS marks are similar in sound, appearance and meaning; are confusingly similar; and that the goods in [CAN]'s Registration are also related to the goods in [Balle]'s Application."); *see also Id.*, Exhibit C (RFA Set 1 Responses) Request No. 2 and Response No. 2.

**4. CAN Cannot Tack Its BABY REBELS Mark Onto Its LITTLE REBELS Mark.<sup>4</sup>**

Given that CAN has admitted that Balle has priority of use and that there is a likelihood of confusion between the REBELS and BABY REBELS marks, in a desperate attempt to avoid having its BABY REBELS mark cancelled CAN has suggested that it may be able to establish priority of use by tacking on the use of its LITTLE REBELS Mark, which dates back to October of 1987, on to the use of its BABY REBELS Mark, which did not begin until after Balle began using his REBELS mark in 1993.<sup>5</sup> It is clear from the case law, however, that CAN is misconstruing this very narrow doctrine.

A party seeking to “tack” its use of an earlier mark onto its use of a later mark for the same goods or services may do so only if the earlier and later marks are legal equivalents, or are indistinguishable from one another. To meet the legal equivalents test, the marks must create the same, continuing commercial impression and cannot differ materially from one another. *Pro-Cuts v. Schilz-Price Enters., Inc.*, 27 U.S.P.Q.2d 1224, 1226-27 (T.T.A.B. 1993) (holding that applicant cannot tack for priority purposes the older use of PRO-KUT in distinctive lettering framed by two palm trees onto the later use of PRO-CUTS in different distinctive lettering, framed by a rounded rectangle. “Aside from the differences between the marks in spelling and pluralization, there is a very material difference between them because of their different design features. ... [T]hey clearly are not legal equivalents.”); *The Wet Seal, Inc. v. FD Management, Inc.*, 82 U.S.P.Q.2d 1629, 2007 WL 458529 (T.T.A.B. 2007) (finding applicant cannot tack on prior user of ELIZABETH ARDEN to later use of ARDENBEAUTY in order to achieve priority, noting that the standard for tacking is “very strict” and is permitted only in “rare cases.”); *Van Dyne-Crotty, Inc. v. Wear-Guard Corp.*, 926 F.2d 1156 (Fed. Cir. 1991) (tacking

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<sup>4</sup> In the Federal Circuit and the T.T.A.B., the question of tacking raises a question of law. *Van Dyne-Crotty, Inc. v. Wear-Guard Corp.*, 926 F.2d 1156 (Fed. Cir. 1991). Consequently, summary judgment on the tacking issue may be determined by a comparison of the trademark specimens in the record without more. *See Id.*

<sup>5</sup> As previously discussed, whether this is 1995 or 2009 is immaterial.

not permitted between CLOTHES THAT WORK and CLOTHES THAT WORK. FOR THE WORK YOU DO).

Two marks that contain different words create “different commercial impressions and hence are not legally identical.” *See, e.g., American Paging, Inc. v. American Mobilphone, Inc.*, 13 U.S.P.Q.2d 2036 (T.T.A.B. 1989), *aff’d*, 17 U.S.P.Q.2d 1726 (Fed. Cir. 1990) (registrant was not permitted to tack on its prior use of the mark AMERICAN MOBILPHONE and star and stripe design to achieve priority of use for AMERICAN MOBILPHONE PAGING with an identical star and stripe design).

CAN’s BABY REBELS and LITTLE REBELS marks cannot convey the “same, continuing commercial impression” as a matter of law because they are materially different from each other. Indeed, they are composed of different words -- BABY, and LITTLE -- that do not even convey the same meaning. Also, while “BABY” is disclaimed in the BABY REBELS registration, LITTLE is not disclaimed in the LITTLE REBELS registration. *See Heller Dec.*, Exs. F, K (U.S. Trademark Registration Certificate for Registration Nos. 3,811,758; 1,523,581).

Additionally, the USPTO did not cite the LITTLE REBELS mark during the prosecution of the Original REBELS Application nor in the instant REBELS Application, while it did cite BABY REBELS during the prosecution of the instant REBELS application. This demonstrates consistency in the USPTO opinion that the marks LITTLE REBELS and REBELS are not confusingly similar (while BABY REBELS and REBELS are confusingly similar); therefore, LITTLE REBELS and BABY REBELS cannot be legal equivalents. CAN never filed an opposition or cancellation against the Original REBELS Application and the marks co-existed for some time, thereby demonstrating CAN’s agreement with the USPTO’s opinion.

Moreover, the marks have different appearances, relate to different goods, and connote different impressions. *Compare* U.S. Trademark Registration Certificate for Registration No. 1,523,581 (“For: boys’ and girls’...”) *and* U.S. Trademark Registration Certificate for

Registration No. 3,811,758 (“For: clothing and accessories for infants...”). In this instance, tacking should not be permitted. *Van Dyne-Crotty, Inc. v. Wear-Guard Corp.*, 926 F.2d 1156, 1159 (C.A.Fed. 1991) (“the later mark should not materially differ from or alter the character of the mark attempted to be “tacked.”) citing 1 J. Gilson, *Trademark Protection and Practice* § 3.03[1] at 3-67-68 (1990) (“[w]hat may seem minor to the trademark owner modifying his mark may, from the standpoint of maintaining continuous priority rights, result in an entirely new mark with its own, and later, priority.”). Hence, CAN cannot rely on a tacking argument to save its BABY REBELS mark from inevitable cancellation.

#### IV. CONCLUSION

For the foregoing reasons, the Balle’s Motion for Summary Judgment should be granted and the Cancellation should be sustained.

Respectfully submitted,  
GREENBERG TRAURIG, LLP

Dated: March 28, 2012

A handwritten signature in blue ink, appearing to read "Susan Heller", is written over a horizontal line.

By: \_\_\_\_\_  
Susan L. Heller, Esq.  
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Attorneys for Eyal Balle

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he is one of the attorneys for Petitioner Eyal Balle in the above-captioned action, and that on the date which appears below he served a true and accurate copy of the foregoing PETITIONER'S MOTION FOR SUMMARY JUDGMENT upon Registrant Children's Apparel Network, LTD. by causing a copy thereof to be served by Federal Express, postage pre-paid, to Petitioner's attorneys to the following address:

AMSTER, ROTHSTEIN & EBENSTEIN LLP  
Attorneys for Registrant Children's Apparel Network Ltd.  
Chester Rothstein  
90 Park Avenue  
New York, NY 10036

and by e-mail transmission to the following address:

PTOdocket@arelaw.com

Dated: March 28, 2012

A handwritten signature in blue ink, appearing to read 'Eyal Balle', is written above a horizontal line.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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EYAL BALLE,	:	
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Petitioner,	:	
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v.	:	
	:	
CHILDREN'S APPAREL NETWORK, LTD.,	:	
	:	
Registrant.	:	

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**DECLARATION OF EYAL BALLE**

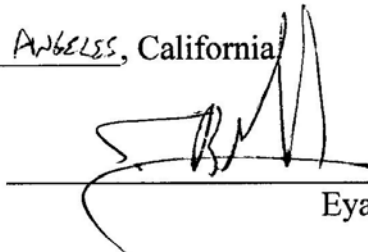
I, Eyal Balle, declare as follows:

1. I am the President of Skylar Holdings, LLC, dba Rebels. I am also the owner of the trademark REBELS. I make this declaration in support of Petitioner Eyal Balle's Motion for Summary Judgment regarding the above-referenced proceeding. I have personal knowledge of the following facts, and if called as a witness, I could and would testify competently to such facts under oath.
2. I have been using the trademark REBELS in commerce on footwear continuously since 1993. In addition, I have used the Trademark REBELS on promotional items from time to time over the years, including on T-Shirts, Backpacks, Tote bags, and CD cover. Examples of the REBELS marks on promotional items are attached hereto as Exhibit A.
3. On November 22, 1993, I filed an application to federally register the REBELS mark for "clothing, namely footwear" in Class 25 (the "Original REBELS Application"). On April 9, 1996, the USPTO issued Registration No. 1,966,107 to me for REBELS (the "REBELS Registration"). The USPTO did not cite LITTLE REBELS during the prosecution of the Original REBELS Application. The REBELS and LITTLE REBELS marks co-existed for many years. However, due to an inadvertent error, the REBELS registration was canceled.

4. On July 16, 2009, I filed an application to federally register the REBELS trademark for "footwear" in Class 25 (the "Application"). That Application was assigned Serial No. 77/783,154. I filed the Application under Section 1(a) of the Lanham Act claiming first use of my REBELS mark in commerce at least as early as October 1, 1993 and I have been using the REBELS mark continuously since that time.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Executed on March <sup>14</sup>27, 2012 in LOS ANGELES, California

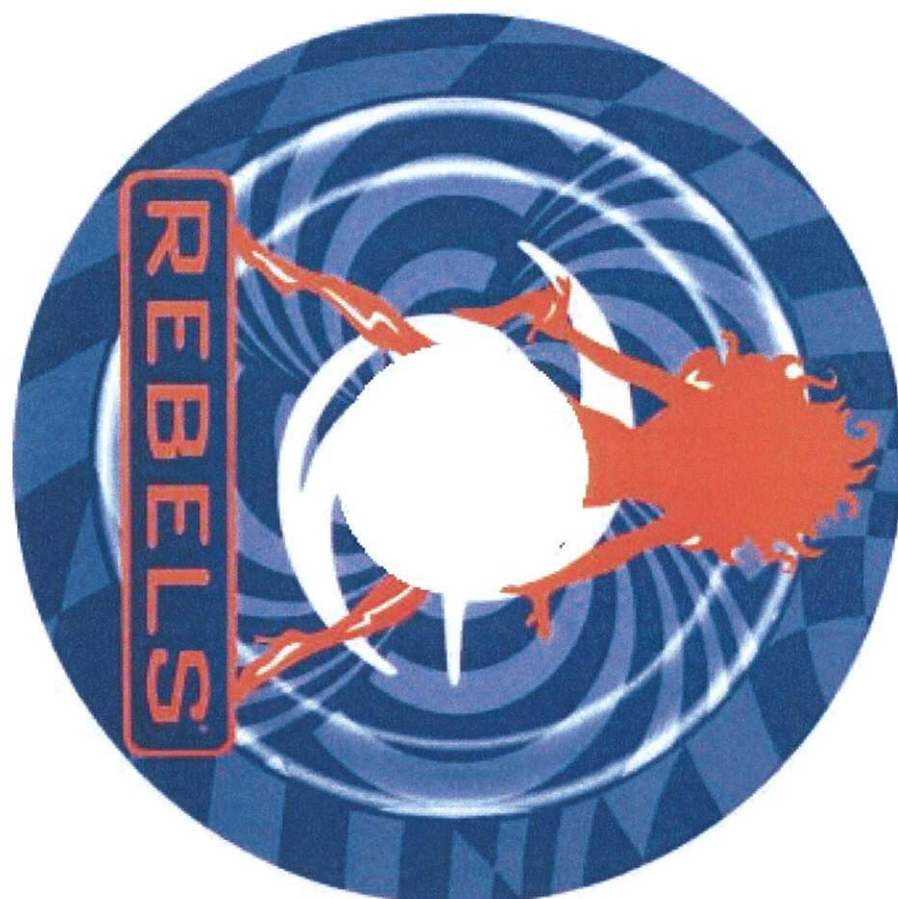
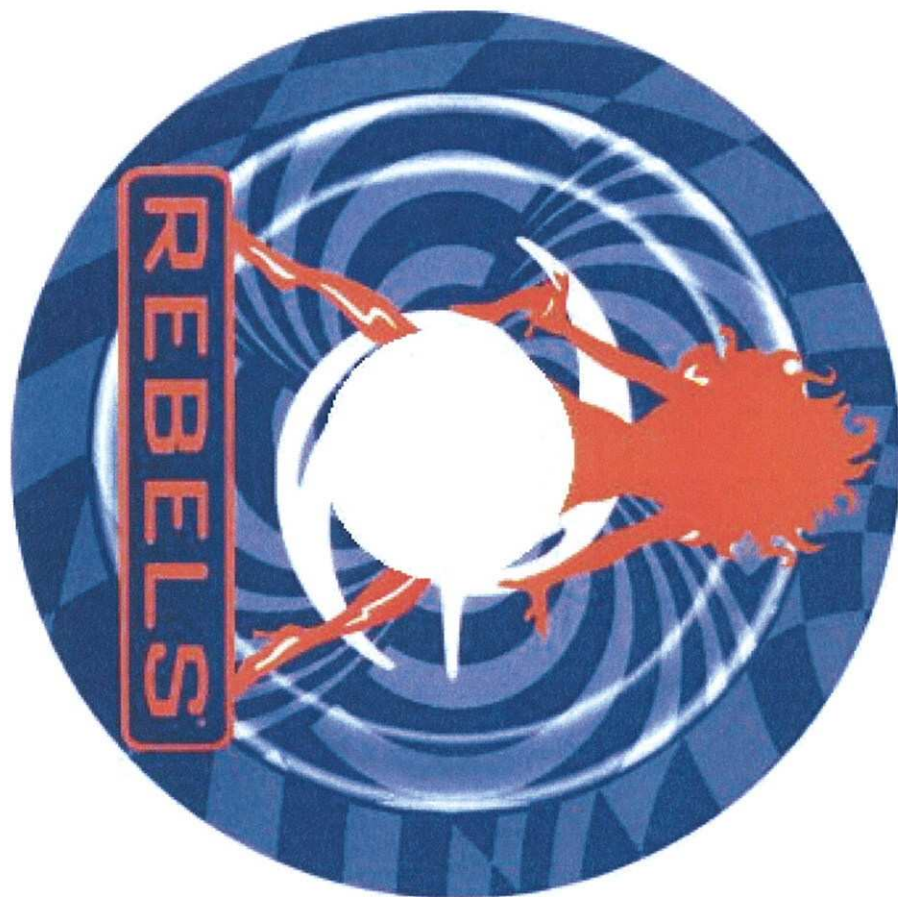


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Eyal Balle

# EXHIBIT A







IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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EYAL BALLE,

Petitioner,

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CHILDREN'S APPAREL NETWORK, LTD.,

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Cancellation No. 92054165

**DECLARATION OF SUSAN HELLER**

I, Susan Heller, declare as follows:

1. I am an attorney at law duly licensed to practice law in the State of California, District of Columbia, Illinois and before the Trademark Trial and Appeal Board. I am a shareholder of Greenberg Traurig, LLP, attorneys of record for Petitioner Eyal Balle ("Balle"). I make this Declaration in support of Petitioner Eyal Balle's Motion for Summary Judgment in the above-captioned action. I have personal knowledge of the facts set forth herein, and if called as a witness, could and would testify competently to the facts set forth below.

2. Attached hereto and marked as Exhibit B is a true and correct copy of CAN's Answer And Affirmative Defense To Petition For Cancellation.

3. Attached hereto and marked as Exhibit C is a true and correct copy of the Registrant's Responses And Objections To Petitioner's First Set Of Requests For Admission To Registrant.

4. Attached hereto and marked as Exhibit D is a true and correct copy of the Registrant's Responses And Objections To Petitioner's Second Set Of Requests For Admission To Registrant.

5. Attached hereto and marked as Exhibit E is a true and correct copy of the Registrant's Responses And Objections To Petitioner's Second Set Of Interrogatories To Registrant.

6. Attached hereto and marked as Exhibit F is a true and correct copy of U.S. Trademark Registration Certificate for Registration No. 3,811,758.

7. Attached hereto and marked as Exhibit G is a true and correct copy of USPTO TARR status information for Registration 1,966,107.

8. Attached hereto and marked as Exhibit H is a true and correct copy of U.S. Trademark Application for Serial No. 77/783,154

9. Attached hereto and marked as Exhibit I is a true and correct copy of U.S. Trademark Office Action, December 15, 2010, for Serial No. 77/783,154.

10. Attached hereto and marked as Exhibit J is a true and correct copy of U.S. Trademark Registration Certificate for Registration No. 1,523,581.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Executed on March 28, 2012, at Santa Monica, California.



---

Susan Heller  
Greenberg Traurig, LLP

## EXHIBIT B



ESTTA Tracking number: **ESTTA428935**

Filing date: **09/06/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92054165
Party	Defendant Children's Apparel Network, Ltd.
Correspondence Address	CHESTER ROTHSTEIN AMSTER ROTHSTEIN & EBENSTEIN LLP 90 PARK AVENUE NEW YORK, NY 10016 UNITED STATES ptodocket@arelaw.com
Submission	Answer
Filer's Name	Chester Rothstein [26700-0066]
Filer's e-mail	ptodocket@arelaw.com
Signature	/Chester Rothstein/
Date	09/06/2011
Attachments	Answer 92054165.pdf ( 4 pages )(21347 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

*In the Matter of Reg. No. 3811758  
for the trademark **BABY REBELS***

-----X  
EYAL BALLE,

Petitioner,

v.

CHILDREN'S APPAREL NETWORK, LTD.,

Registrant.  
-----X

**Cancellation No. 92054165**

**ANSWER AND AFFIRMATIVE  
DEFENSE TO PETITION  
FOR CANCELLATION**

Registrant Children's Apparel Network, Ltd. ("Registrant"), through its attorneys, Amster, Rothstein & Ebenstein LLP, for its Answer and Affirmative Defenses to the Petition for Cancellation (the "Petition") filed by Eyal Balle ("Petitioner"), states as follows:

1. Registrant admits the allegations contained in ¶1 of the Petition.
2. Registrant admits the allegations contained in ¶2 of the Petition, except Registrant affirmatively states that the dates of first use stated in Registration No. 3811758 ("the '758 Registration") are incorrect and should instead read "at least as early as March 1995."
3. Registrant lacks knowledge or information sufficient to form a belief as to the allegations contained in ¶3 of the Petition, and therefore denies the same.
4. Registrant lacks knowledge or information sufficient to form a belief as to the allegations contained in ¶4 of the Petition, and therefore denies the same.
5. Registrant lacks knowledge or information sufficient to form a belief as to the allegations contained in ¶5 of the Petition, and therefore denies the same.
6. Registrant denies the allegations contained in ¶6 of the Petition.

7. Registrant admits that the BABY REBELS and REBELS marks are similar in sound, appearance and meaning; are confusingly similar; and that the goods in the Registrant's Registration are also related to the goods in Petitioner's Application. Registrant denies the remaining allegations contained in ¶7 of the Petition.

8. Registrant denies the allegations contained in ¶8 of the Petition.

9. No allegations are contained in ¶9 of the Petition, thus no answer is required.

**AFFIRMATIVE DEFENSE**  
**(Registrant Owns Senior Rights Based on a Related Mark)**

10. Registrant is owner of U.S. Registration No. 1523581 for the mark LITTLE REBELS in a design format, as applied to goods in International Class 25 ("the '581 Registration").

11. The '581 Registration was filed on December 28, 1987, registered on February 7, 1989, and claims a date of first use in commerce of October 23, 1987.

12. Registrant's rights in the '581 Registration predate both Petitioner's filing date for Applicant's Application Serial No. 77/783,154 ("the '154 Application"), and Petitioner's claimed dates of first use in the '154 Application of September 15, 1993 and October 1, 1993.

13. In or about March 1995, Registrant began use of the mark BABY REBELS, a mark which is closely related to Registrant's LITTLE REBELS mark. The term "LITTLE" in LITTLE REBELS is merely descriptive of the users of goods under Registrant's mark, namely little children. The term "BABY" in Registrant's BABY REBELS mark is merely descriptive of an attribute of the intended users of those goods, namely babies.

14. The term REBELS is the dominant portion of Registrant's LITTLE REBELS and BABY REBELS marks.



15. The marks BABY REBELS and LITTLE REBELS are closely related to each other and marketed in conjunction with each other such that the public and Registrant's wholesale customers recognize that they are related marks within the same line of children's clothing.

16. The United States Patent and Trademark Office could have cited the '581 Registration under Section 2(d) against the '154 Application.

17. Registrant is entitled to ownership of both the '581 Registration for LITTLE REBELS and the '758 Registration for BABY REBELS, and Petitioner's '154 Application is appropriately rejected under Section 2(d) of the Trademark Act.

**WHEREFORE**, Registrant requests that this Board deny Petitioner's prayer for judgment of cancellation of the '758 Registration and enter judgment in Registrant's favor.

Dated: September 6, 2011

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP  
Attorneys for Registrant  
90 Park Avenue  
New York, NY 10016  
Tel: (212) 336-8000  
Fax: (212) 336-8001  
e-Mail: ptodocket@arelaw.com

By /Chester Rothstein/  
Chester Rothstein

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is one of the attorneys for Registrant Children's Apparel Network, Ltd. in the captioned action, and that on the date which appears below he served a true and accurate copy of the foregoing ANSWER AND AFFIRMATIVE DEFENSE TO PETITION FOR CANCELLATION upon Petitioner, by causing a copy thereof to be sent to Petitioner's attorneys, by first class mail, postage prepaid, to the following address:

Susan L. Heller, Esq.  
Greenberg Traurig LLP  
2450 Colorado Avenue STE 400 East  
Santa Monica, CA 90404

and by e-Mail transmission to the following address:

HellerS@gtlaw.com

/Chester Rothstein/  
\_\_\_\_\_  
Chester Rothstein

Dated: September 6, 2011  
New York, NY

# EXHIBIT C

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----x  
EYAL BALLE, :  
 : Cancellation No. 92054165  
Petitioner, :  
 :  
v. :  
 :  
CHILDREN'S APPAREL NETWORK, LTD., :  
 :  
Registrant. :  
-----x

**REGISTRANT'S RESPONSES AND OBJECTIONS TO PETITIONER'S  
FIRST SET OF REQUESTS FOR ADMISSION TO REGISTRANT**

**PRELIMINARY STATEMENT**

1. Registrant's responses to Petitioner's Requests are based upon the information and documentation that is currently available and specifically known to Registrant. A reasonable inquiry has been made and the responses to the Requests are made in a good faith effort to provide the information currently known by Registrant, but Registrant specifically reserves the right to amend and/or supplement these answers and objections, pursuant to ongoing discovery, if and when additional facts or materials are discovered or ascertained.

2. Registrant's responses to the Requests are made solely for the purpose of this litigation and are subject to all objections as to admissibility including, without limitation, objections to competence, authenticity, relevance, materiality, propriety, admissibility and any and all other objections and grounds that would or could require or permit the exclusion of any information from evidence, all of which objections and grounds are reserved and may be interposed in the future.

### **GENERAL OBJECTIONS**

1. Registrant objects to the Requests to the extent that they exceed or conflict with Registrant's obligations under the Federal Rules of Civil Procedure.
2. Registrant objects to the Requests on the grounds of relevancy.
3. Registrant objects to the Requests to the extent that they are not limited to activity in the United States.
4. Registrant objects to the Requests to the extent they seek admission of information which is publicly available and may be judicially noticed.
5. Registrant objects to the Requests to the extent they call for a legal conclusion.
6. Registrant objects to these Requests to the extent they are vague or ambiguous.
7. Each of these General Objections is hereinafter incorporated by reference into each and every specific Response set forth below, whether or not specifically stated.

### **RESPONSES TO REQUESTS FOR ADMISSION**

#### **REQUEST FOR ADMISSION NO. 1**

Admit that YOU were aware of the REBELS mark prior to adopting the BABY REBELS mark.

#### **RESPONSE TO ADMISSION NO. 1**

Deny.

#### **REQUEST FOR ADMISSION NO. 2**

Admit that REGISTRANT's BABY REBELS mark and PETITIONER's REBELS mark are similar in sound, appearance and meaning and are confusingly similar.

#### **RESPONSE TO ADMISSION NO. 2**

Admit.

**REQUEST FOR ADMISSION NO. 3**

Admit that the goods in the REGISTRANT's Registration are also related to the goods in PETITIONER's application.

**RESPONSE TO ADMISSION NO. 3**

Admit.

**REQUEST FOR ADMISSION NO. 4**

Admit that REGISTRANT did not use its BABY REBELS mark in commerce prior to May 2009.

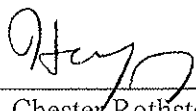
**RESPONSE TO ADMISSION NO. 4**

Deny.

Respectfully submitted,

AMSTER ROTHSTEIN & EBENSTEIN LLP  
90 Park Avenue  
New York, NY 10016  
Tel: (212) 336-8000  
Fax: (212) 336-8001

Dated: December 16, 2011  
New York, New York

By  \_\_\_\_\_  
Chester Rothstein  
Holly Pekowsky

*Attorneys for Registrant Children's Apparel  
Network, Ltd.*


**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she is one of the attorneys for Registrant Children's Apparel Network, Ltd. in the above-captioned action, and that on the date which appears below she served a true and accurate copy of the foregoing REGISTRANT'S RESPONSES AND OBJECTIONS TO PETITIONER'S FIRST SET OF REQUESTS FOR ADMISSION TO REGISTRANT upon Petitioner Eyal Balle by causing a copy thereof to be served by Federal Express, postage pre-paid, to Petitioner's attorneys to the following address:

Susan L. Heller, Esq.  
Greenberg Taurig, LLP  
2450 Colorado Avenue, Suite 400E  
Santa Monica, CA 90404

and by e-mail transmission to the following address:

hellers@gtlaw.com

  
\_\_\_\_\_  
Holly Pekowsky

Dated: December 16, 2011  
New York, New York

## EXHIBIT D



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----x  
EYAL BALLE, :  
 : Cancellation No. 92054165  
Petitioner, :  
 :  
v. :  
 :  
CHILDREN'S APPAREL NETWORK, LTD., :  
 :  
Registrant. :  
-----x

**REGISTRANT'S RESPONSES AND OBJECTIONS TO PETITIONER'S  
SECOND SET OF REQUESTS FOR ADMISSION TO REGISTRANT**

**PRELIMINARY STATEMENT**

1. Registrant's responses to Petitioner's Requests are based upon the information and documentation that is currently available and specifically known to Registrant. A reasonable inquiry has been made and the responses to the Requests are made in a good faith effort to provide the information currently known by Registrant, but Registrant specifically reserves the right to amend and/or supplement these answers and objections, pursuant to ongoing discovery, if and when additional facts or materials are discovered or ascertained.

2. Registrant's responses to the Requests are made solely for the purpose of this litigation and are subject to all objections as to admissibility including, without limitation, objections to competence, authenticity, relevance, materiality, propriety, admissibility and any and all other objections and grounds that would or could require or permit the exclusion of any information from evidence, all of which objections and grounds are reserved and may be interposed in the future.

### **GENERAL OBJECTIONS**

1. Registrant objects to the Requests to the extent that they exceed or conflict with Registrant's obligations under the Federal Rules of Civil Procedure.
2. Registrant objects to the Requests on the grounds of relevancy.
3. Registrant objects to the Requests to the extent that they are not limited to activity in the United States.
4. Registrant objects to the Requests to the extent they seek admission of information which is publicly available and may be judicially noticed.
5. Registrant objects to the Requests to they extent they call for a legal conclusion.
6. Registrant objects to these Requests to the extent they are vague or ambiguous.
7. Each of these General Objections is hereinafter incorporated by reference into each and every specific Response set forth below, whether or not specifically stated.

### **RESPONSES TO REQUESTS FOR ADMISSION**

#### **REQUEST FOR ADMISSION NO. 5**

Admit that REGISTRANT did not use its BABY REBELS mark prior to 1995.

#### **RESPONSE TO ADMISSION NO. 5**

Admit, but affirmatively state that Registrant has used its LITTLE REBELS mark since 1987, and LITTLE REBELS and BABY REBELS are, in essence, the same mark since the dominant portion of both marks is "rebels"; the words "little" and "baby" are descriptive and create the same continuing commercial impression; and the design of the labels are often similar.

#### **REQUEST FOR ADMISSION NO. 6**

Admit that REGISTRANT has not used its BABY REBELS mark continuously in interstate commerce from 1995 to present.

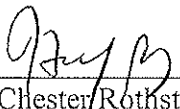
**RESPONSE TO ADMISSION NO. 6**

Admit, but affirmatively state that Registrant never abandoned its BABY REBELS Mark.

Respectfully submitted,

AMSTER ROTHSTEIN & EBENSTEIN LLP  
90 Park Avenue  
New York, NY 10016  
Tel: (212) 336-8000  
Fax: (212) 336-8001

Dated: December 16, 2011  
New York, New York

By  \_\_\_\_\_  
Chester Rothstein  
Holly Pekowsky

*Attorneys for Registrant Children's Apparel  
Network, Ltd.*

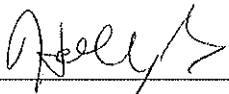
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she is one of the attorneys for Registrant Children's Apparel Network, Ltd. in the above-captioned action, and that on the date which appears below she served a true and accurate copy of the foregoing REGISTRANT'S RESPONSES AND OBJECTIONS TO PETITIONER'S SECOND SET OF REQUESTS FOR ADMISSION TO REGISTRANT upon Petitioner Eyal Balle by causing a copy thereof to be served by Federal Express, postage pre-paid, to Petitioner's attorneys to the following address:

Susan L. Heller, Esq.  
Greenberg Taurig, LLP  
2450 Colorado Avenue, Suite 400E  
Santa Monica, CA 90404

and by e-mail transmission to the following address:

hellers@gtlaw.com

  
\_\_\_\_\_  
Holly Pekowsky

Dated: December 16, 2011  
New York, New York

## EXHIBIT E

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----x

EYAL BALLE,	:	
	:	Cancellation No. 92054165
Petitioner,	:	
	:	
v.	:	
	:	
CHILDREN'S APPAREL NETWORK, LTD.,	:	
	:	
Registrant.	:	

-----x

**REGISTRANT'S RESPONSES AND OBJECTIONS TO PETITIONER'S  
SECOND SET OF INTERROGATORIES TO REGISTRANT  
PRELIMINARY STATEMENT AND GENERAL OBJECTIONS**

1. Registrant objects to these Interrogatories, including any definition or instruction therein, to the extent they seek to impose obligations beyond those in the Federal Rules of Civil Procedure or the T.B.M.P.

2. Registrant objects to these Interrogatories to the extent they seek information relating to activity occurring outside the United States. Registrant will only provide information with respect to the U.S.

3. Registrant objects to these Interrogatories to the extent that they seek information which is not relevant to this proceeding or reasonably calculated to lead to the discovery of admissible evidence.

4. Registrant objects to these Interrogatories to the extent that they seek information or documents exempt from discovery by virtue of the attorney client privilege or the work product doctrine or any other applicable privilege or doctrine. Inadvertent disclosure of any such information or documents is not intended to be, and shall not operate as, a waiver of an

applicable privilege, in whole or in part. Nor is any such advertent disclosure intended to be, nor shall it constitute, a waiver of the right to object to any use of such information.

5. Registrant objects to these Interrogatories to the extent that they seek confidential or proprietary business information. All information and materials provided by Registrant which are subject to said objection shall be produced upon entry of a suitable Protective Order between the parties in the instant Cancellation.

6. Registrant objects to those Interrogatories that are duplicative or cumulative.

7. Registrant objects to these Interrogatories to the extent that they are overbroad and unduly burdensome.

8. Registrant objects to these Interrogatories to the extent that they are vague and ambiguous.

9. Registrant objects to these Interrogatories to the extent that they request information which has already been produced or are already in Petitioner's custody, possession or control.

10. Registrant objects to these Interrogatories to the extent they request "all" information, documents or knowledgeable persons on a particular topic, where representative information and/or documents will suffice.

11. Registrant objects to these Interrogatories to the extent they request information which is publicly available.

12. Registrant objects to providing the identity of any of its customers pursuant to T.B.M.P. § 414(3).

13. Registrant submits these responses without conceding the relevancy or materiality of the subject matter of any interrogatory, and without prejudice to all objections to the use or admissibility of any response.

14. Registrant objects to these requests insofar as they may require the listing of privileged documents prepared by or transmitted to counsel during the pendency of this action; such a listing could constitute an index of counsel's files and of all communications between counsel and client; which would reveal privileged information and would be inconsistent with Rule 26(b)(5) of the Federal Rules of Civil Procedure.

15. Where Registrant agrees to provide information or produce documents in response to Petitioner's document requests, Registrant's agreement to do so does not reflect its concurrence with any factual assertions contained therein. Except for facts explicitly admitted herein, no admissions of any nature whatsoever are to be implied nor be inferred. The fact that an interrogatory has been answered or a document request has been responded to should not be taken as an admission or acceptance of the existence of such facts set forth or assumed by such interrogatory or request, or that such response constitutes admissible evidence.

16. Registrant's responses are made solely for the purposes of this Proceeding. Each response is subject to all appropriate objections that would require the exclusion of any statement contained herein if such statement were sought to be introduced in Court. All objections and grounds for objections are preserved and may be interposed at a later date.

17. Each and all of these General Objections are hereinafter incorporated by reference in response to each and every request.

### **RESPONSES TO INTERROGATORIES**

#### **INTERROGATORY NO. 11**

IDENTIFY the date you first used the BABY REBELS mark in interstate commerce.

#### **RESPONSE TO INTERROGATORY NO. 11**

*See* Objection No. 11. Subject to and without waiving the foregoing Objection, Registrant responds as follows: at least as early as April 12, 1995.



**INTERROGATORY NO. 12**

IDENTIFY any period since the date YOU first used the BABY REBELS mark in interstate commerce, that the BABY REBELS mark was not in use in commerce.

**RESPONSE TO INTERROGATORY NO. 12**

Applicant believes that there may have been one or more periods during which the BABY REBELS mark was not in use. However, the mark was never abandoned, and use resumed in 2009.

**INTERROGATORY NO. 13**

IDENTIFY the date you first used the LITTLE REBELS mark in interstate commerce.

**RESPONSE TO INTERROGATORY NO. 13**

*See* Objection No. 11. Subject to and without waiving the foregoing Objection, Registrant responds as follows: at least as early as October 23, 1987.

**INTERROGATORY NO. 14**

IDENTIFY any period since the date YOU first used the LITTLE REBELS mark in interstate commerce, that the LITTLE REBELS mark was not in use in commerce.

**RESPONSE TO INTERROGATORY NO. 14**

None.

**INTERROGATORY NO. 15**

State the reason why YOU did not file a Section 8 statement of use in connection with YOUR previous registration for the BABY REBELS mark, Registration No. 1,949,540.

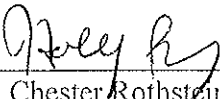
**RESPONSE TO INTERROGATORY NO. 15**

Registrant does not have information responsive to this Interrogatory.

Respectfully submitted,

AMSTER ROTHSTEIN & EBENSTEIN LLP  
90 Park Avenue  
New York, NY 10016  
Tel: (212) 336-8000  
Fax: (212) 336-8001

Dated: December 6, 2011  
New York, New York

By  \_\_\_\_\_  
Chester Rothstein  
Holly Pekowsky

*Attorneys for Registrant Children's Apparel  
Network, Ltd.*

VERIFICATION

I, JACK MALE the V.P. of Children's Apparel Network, Ltd., declare under penalty of perjury that, to the best of my knowledge and belief, REGISTRANT'S RESPONSES AND OBJECTIONS TO PETITIONER'S SECOND SET OF INTERROGATORIES TO REGISTRANT are true and correct.

Dated this 16 day of December, 2011

By:  \_\_\_\_\_

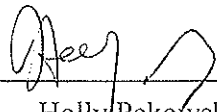
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she is one of the attorneys for Registrant Children's Apparel Network, Ltd. in the above-captioned action, and that on the date which appears below she served a true and accurate copy of the foregoing REGISTRANT'S RESPONSES AND OBJECTIONS TO PETITIONER'S SECOND SET OF INTERROGATORIES TO REGISTRANT upon Petitioner Eyal Balle by causing a copy thereof to be served by Federal Express, postage pre-paid, to Petitioner's attorneys to the following address:

Susan L. Heller, Esq.  
Greenberg Taurig, LLP  
2450 Colorado Avenue, Suite 400E  
Santa Monica, CA 90404

and by e-mail transmission to the following address:

hellers@gtlaw.com

  
\_\_\_\_\_  
Holly Pekowsky

Dated: December 16, 2011  
New York, New York

## EXHIBIT F

# United States of America

United States Patent and Trademark Office

## BABY REBELS

**Reg. No. 3,811,758**

**Registered June 29, 2010**

**Int. Cl.: 25**

**TRADEMARK**

**PRINCIPAL REGISTER**

CHILDREN'S APPAREL NETWORK, LTD. (NEW JERSEY CORPORATION)  
77 SOUTH FIRST STREET  
ELIZABETH, NJ 07206

FOR: CLOTHING AND ACCESSORIES FOR INFANTS, NAMELY, CAPS, CARDIGANS, CREEPERS, DENIM JACKETS, HATS, JACKETS, JEANS, JERSEYS, OVERALLS, PANTS, PULLOVERS, SHIRTS, SHORTS, SOCKS, SWEAT PANTS, SWEAT SHIRTS, SWEATERS, T-SHIRTS, TANK-TOPS, VESTS; JACKET SETS COMPRISED OF JACKETS, PANTS AND SHIRTS; OVERALL SETS COMPRISED OF OVERALLS AND SHIRTS; SHIRT SETS COMPRISED OF SHIRTS AND PANTS; SWEATER SETS COMPRISED OF SWEATERS, PANTS AND SHIRTS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 5-0-2009; IN COMMERCE 5-0-2009.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BABY", APART FROM THE MARK AS SHOWN.

SN 77-674,890, FILED 2-20-2009.

DAVID MURRAY, EXAMINING ATTORNEY



*David S. Kayas*

Director of the United States Patent and Trademark Office

## EXHIBIT G

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2012-03-27 16:17:07 ET

Serial Number: 74461632 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 1966107

Mark

**REBELS**

(words only): REBELS

Standard Character claim: No

**Current Status:** Registration cancelled because registrant did not file an acceptable declaration under Section 8. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

**Date of Status:** 2003-01-11

**Filing Date:** 1993-11-22

**Transformed into a National Application:** No

**Registration Date:** 1996-04-09

**Register:** Principal

**Law Office Assigned:** LAW OFFICE 109

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)

**Current Location:** 900 -File Repository (Franconia)

**Date In Location:** 1999-08-20

---

**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. Balle, Eyal



**Address:**

Balle, Eyal  
1229 Comstock Avenue  
Los Angeles, CA 90024  
United States

**Legal Entity Type:** Individual**Country of Citizenship:** Israel

---

**GOODS AND/OR SERVICES**

---

**International Class:** 025**Class Status:** Section 8 - Cancelled

clothing, namely footwear

**Basis:** 1(a)**First Use Date:** 1993-09-15**First Use in Commerce Date:** 1993-10-01

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**ADDITIONAL INFORMATION**

---

(NOT AVAILABLE)

---

**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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**NOTE:** To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2003-01-11 - Canceled Section 8 (6-year)

1996-04-09 - Registered - Principal Register

1996-01-16 - Published for opposition

1995-12-15 - Notice of publication

1995-08-10 - Approved For Pub - Principal Register

1995-08-10 - Approved For Pub - Principal Register

1995-07-13 - Reinstated

1995-08-10 - Previous Action Count Withdrawn

1994-05-16 - Non-final action mailed

1994-04-15 - Assigned To Examiner

1994-04-05 - Assigned To Examiner

---

**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

Marc J. Kesten

**Correspondent**

Marc J. Kesten

Law Offices of Marc J. Kesten

3850 Inglewood Boulevard, Suite 3

Los Angeles, CA 90066

---

## EXHIBIT H

# Trademark/Service Mark Application, Principal Register

Serial Number: 77783154

Filing Date: 07/16/2009

The table below presents the data as entered.

Input Field	Entered
<b>SERIAL NUMBER</b>	77783154
<b>MARK INFORMATION</b>	
*MARK	<u>REBELS</u>
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	REBELS
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
<b>APPLICANT INFORMATION</b>	
*OWNER OF MARK	Eyal Balle
INTERNAL ADDRESS	c/o Rebels
*STREET	14918 S. Figueroa Street
*CITY	Gardena
*STATE (Required for U.S. applicants)	California
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	90248
<b>LEGAL ENTITY INFORMATION</b>	
TYPE	individual
COUNTRY OF CITIZENSHIP	United States
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	
INTERNATIONAL CLASS	025

<b>*IDENTIFICATION</b>	Footwear
<b>FILING BASIS</b>	SECTION 1(a)
<b>FIRST USE ANYWHERE DATE</b>	At least as early as 09/15/1993
<b>FIRST USE IN COMMERCE DATE</b>	At least as early as 10/01/1993
<b>SPECIMEN FILE NAME(S)</b>	<u>\\TICRS\EXPORT7\IMAGEOUT7 \\777\831\77783154\xml1\AP P0003.JPG</u>
	<u>\\TICRS\EXPORT7\IMAGEOUT7 \\777\831\77783154\xml1\AP P0004.JPG</u>
<b>SPECIMEN DESCRIPTION</b>	Photographs of products bearing mark
<b>ATTORNEY INFORMATION</b>	
<b>NAME</b>	Jill M. Pietrini
<b>ATTORNEY DOCKET NUMBER</b>	42568-030
<b>FIRM NAME</b>	Manatt, Phelps & Phillips, LLP
<b>STREET</b>	11355 W. Olympic Blvd.
<b>CITY</b>	Los Angeles
<b>STATE</b>	California
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	90064
<b>PHONE</b>	(310) 312-4325
<b>FAX</b>	(310) 312-4224
<b>OTHER APPOINTED ATTORNEY</b>	Paul Bost
<b>CORRESPONDENCE INFORMATION</b>	
<b>NAME</b>	Jill M. Pietrini
<b>FIRM NAME</b>	Manatt, Phelps & Phillips, LLP
<b>STREET</b>	11355 W. Olympic Blvd.
<b>CITY</b>	Los Angeles
<b>STATE</b>	California
<b>COUNTRY</b>	United States
<b>ZIP/POSTAL CODE</b>	90064
<b>PHONE</b>	(310) 312-4325
<b>FAX</b>	(310) 312-4224

**FEE INFORMATION**

NUMBER OF CLASSES	1
-------------------	---

FEE PER CLASS	325
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*TOTAL FEE DUE	325
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*TOTAL FEE PAID	325
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**SIGNATURE INFORMATION**

SIGNATURE	/jillpietrini/
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SIGNATORY'S NAME	Jill M. Pietrini
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SIGNATORY'S POSITION	Attorney of record, California bar member
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DATE SIGNED	07/16/2009
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## **Trademark/Service Mark Application, Principal Register**

**Serial Number: 77783154**

**Filing Date: 07/16/2009**

### **To the Commissioner for Trademarks:**

**MARK:** REBELS (Standard Characters, see mark)

The literal element of the mark consists of REBELS.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Eyal Balle, a citizen of United States, having an address of  
c/o Rebels,  
14918 S. Figueroa Street  
Gardena, California 90248  
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 025: Footwear

In International Class 025, the mark was first used at least as early as 09/15/1993, and first used in commerce at least as early as 10/01/1993, and is now in use in such commerce. The applicant is submitting one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) Photographs of products bearing mark.

Specimen File1

Specimen File2

The applicant's current Attorney Information:

Jill M. Pietrini and Paul Bost of Manatt, Phelps & Phillips, LLP  
11355 W. Olympic Blvd.  
Los Angeles, California 90064  
United States

The attorney docket/reference number is 42568-030.

The applicant's current Correspondence Information:

Jill M. Pietrini  
Manatt, Phelps & Phillips, LLP  
11355 W. Olympic Blvd.  
Los Angeles, California 90064  
(310) 312-4325(phone)  
(310) 312-4224(fax)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

### **Declaration**

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /jillpietrini/ Date Signed: 07/16/2009

Signatory's Name: Jill M. Pietrini

Signatory's Position: Attorney of record, California bar member

RAM Sale Number: 5092

RAM Accounting Date: 07/17/2009

Serial Number: 77783154

Internet Transmission Date: Thu Jul 16 19:33:38 EDT 2009

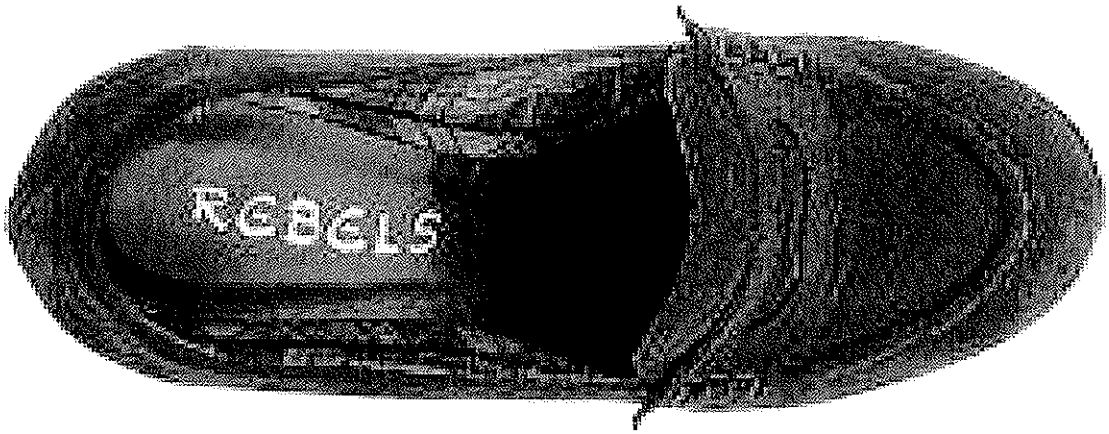
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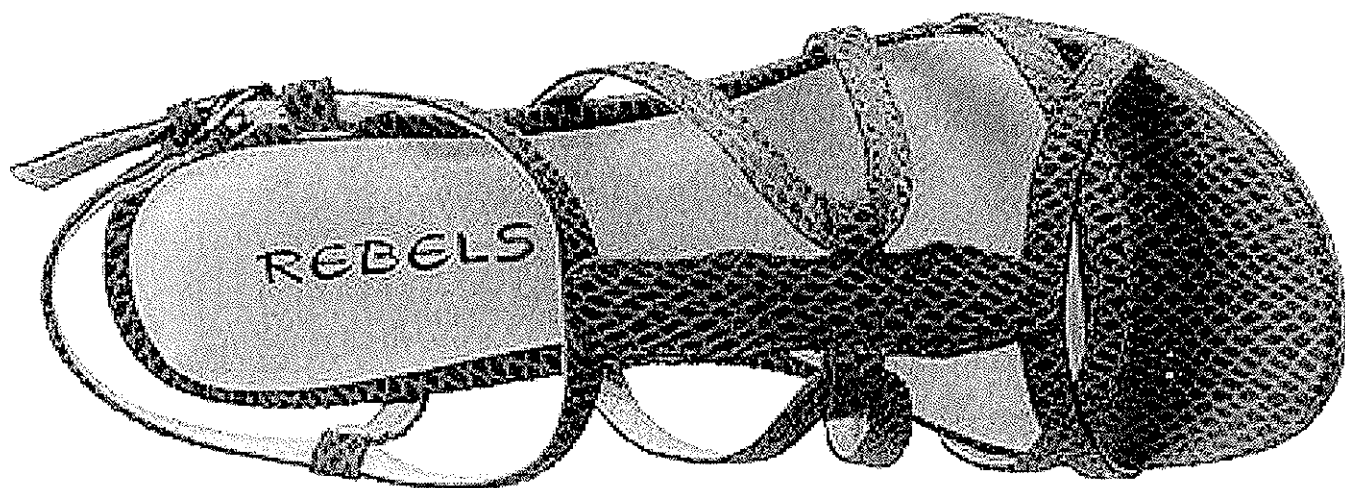
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# REBELS





# EXHIBIT I

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)  
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

**APPLICATION SERIAL NO.** 77783154

**MARK:** REBELS

**\*77783154\***

**CORRESPONDENT ADDRESS:**

JILL M. PIETRINI  
MANATT, PHELPS & PHILLIPS, LLP  
11355 W. OLYMPIC BLVD.  
LOS ANGELES, CA 90064

**CLICK HERE TO RESPOND TO THIS LETTER:**  
<http://www.uspto.gov/teas/eTEASpageD.htm>

**APPLICANT:** Eyal Balle

**CORRESPONDENT'S REFERENCE/DOCKET  
NO:**

42568-030

**CORRESPONDENT E-MAIL ADDRESS:**

**OFFICE ACTION**

**STRICT DEADLINE TO RESPOND TO THIS LETTER**

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

**ISSUE/MAILING DATE:**

The Office has reassigned this application to the undersigned trademark examining attorney.

On October 23, 2009, action on this application was suspended by the previously assigned examining attorney pending the disposition of Application Serial Nos. **77674890 and 77753032**. The referenced prior-pending applications have since registered. Therefore, registration is refused as follows.

**SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION**

Registration of the applied-for mark is refused because of a likelihood of confusion with the marks in U.S. Registration Nos. **3760329 and 3811758**. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the enclosed registrations.

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely that a potential consumer would be confused or mistaken or deceived as to the source of the goods and/or services of the applicant and registrant. *See* 15 U.S.C. §1052(d). The court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) listed the principal factors to be considered when determining whether there is a likelihood of confusion under Section 2(d). *See* TMEP

§1207.01. However, not all of the factors are necessarily relevant or of equal weight, and any one factor may be dominant in a given case, depending upon the evidence of record. *In re Majestic Distilling Co.*, 315 F.3d 1311, 1315, 65 USPQ2d 1201, 1204 (Fed. Cir. 2003); *see In re E. I. du Pont*, 476 F.2d at 1361-62, 177 USPQ at 567.

In this case, the following factors are the most relevant: similarity of the marks, similarity of the goods and/or services, and similarity of trade channels of the goods and/or services. *See In re Opus One, Inc.*, 60 USPQ2d 1812 (TTAB 2001); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); *In re Azteca Rest. Enters., Inc.*, 50 USPQ2d 1209 (TTAB 1999); TMEP §§1207.01 *et seq.*

For the following reasons, the examining attorney concludes that there exists a likelihood of confusion between applicant's proposed mark, **REBELS**, for "Footwear" and registrants' marks:

1. **SOLE REBELS** (Reg. No. 3760329), for "Footwear."
2. **BABY REBELS** (Reg. No. 3811758), for "Clothing and accessories for infants, namely, caps, cardigans, creepers, denim jackets, hats, jackets, jeans, jerseys, overalls, pants, pullovers, shirts, shortalls, shorts, socks, sweat pants, sweat shirts, sweaters, t-shirts, tank-tops, vests; Jacket sets comprised of jackets, pants and shirts; overall sets comprised of overalls and shirts; shirt sets comprised of shirts and pants; sweater sets comprised of sweaters, pants and shirts."

#### *A. Similarity of the Marks*

In a likelihood of confusion determination, the marks are compared for similarities in their appearance, sound, meaning or connotation and commercial impression. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b). Similarity in any one of these elements may be sufficient to find a likelihood of confusion. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); *see* TMEP §1207.01(b).

Although a disclaimed portion of a mark certainly cannot be ignored, and the marks must be compared in their entireties, one feature of a mark may be more significant in creating a commercial impression. Disclaimed matter is typically less significant or less dominant when comparing marks. *See In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1060, 224 USPQ 749, 752 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii).

In this case, the wording SOLE is disclaimed in Reg. No. 3760329 and BABY is disclaimed in Reg. No. 3811758. Thus, the dominant portion of each of the registered marks is appropriately viewed as REBELS, which is the entirety of the applied-for mark. Applicant has effectively deleted descriptive wording from registrants' marks and adopted the inherently distinctive portion of the marks as its own.

The mere deletion of wording from a registered mark may not be sufficient to overcome a likelihood of confusion. *See In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257 (Fed. Cir. 2010); *In re Optica Int'l*, 196 USPQ 775, 778 (TTAB 1977); TMEP §1207.01(b)(ii)-(iii). Here, applicant's mark does not create a distinct commercial impression because it contains the same common wording as registrant's mark, and there is no other wording in the applied-for mark to distinguish it from registrant's mark.

#### *B. Relatedness of the Goods/Services*

The goods and/or services of the parties need not be identical or directly competitive to find a likelihood

of confusion. *See Safety-Kleen Corp. v. Dresser Indus., Inc.*, 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975); TMEP §1207.01(a)(i). Rather, it is sufficient that the goods and/or services are related in some manner and/or the conditions surrounding their marketing are such that they would be encountered by the same purchasers under circumstances that would give rise to the mistaken belief that the goods and/or services come from a common source. *In re Total Quality Group, Inc.*, 51 USPQ2d 1474, 1476 (TTAB 1999); TMEP §1207.01(a)(i); *see, e.g., On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086-87, 56 USPQ2d 1471, 1475-76 (Fed. Cir. 2000); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 1566-68, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

Applicant's goods are identified as “ **Footwear.**” The identification in Reg. No. 3760329 (SOLE REBELS) is also “ **Footwear.**” Thus, applicant's goods are literally identical to those in Reg. No. 3760329. The identification in Reg. No. 3811758 is “Clothing and accessories for infants, namely, caps, cardigans, creepers, denim jackets, hats, jackets, jeans, jerseys, overalls, pants, pullovers, shirts, shortalls, shorts, **socks**, sweat pants, sweat shirts, sweaters, t-shirts, tank-tops, vests; Jacket sets comprised of jackets, pants and shirts; Overall sets comprised of overalls and shirts; Shirt sets comprised of shirts and pants; Sweater sets comprised of sweaters, pants and shirts.”

In a likelihood of confusion analysis, the comparison of the parties' goods and/or services is based on the goods and/or services as they are identified in the application and registration, without limitations or restrictions that are not reflected therein. *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1267-68, 62 USPQ2d 1001, 1004-05 (Fed. Cir. 2002); *In re Dakin's Miniatures, Inc.*, 59 USPQ2d 1593, 1595 (TTAB 1999); *see* TMEP §1207.01(a)(iii).

In this case, applicant's goods and/or services are identified broadly as “ **Footwear.**” Therefore, it is presumed that the application encompasses all goods and/or services of the type described, including the “ **socks**” (for infants) in the registrant's more specific identification, that the goods and/or services move in all normal channels of trade, and that they are available to all potential customers. *See In re La Peregrina Ltd.*, 86 USPQ2d 1645, 1646 (TTAB 2008); *In re Jump Designs LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006); TMEP §1207.01(a)(iii). Please see the attached dictionary definition from the Encarta World English Dictionary, which serves to confirm that FOOTWEAR refers to outer coverings for the feet that often include *socks* or stockings. (*emphasis added*). Thus, applicant's identification of goods includes goods legally identical to those in Reg. No. 3811758.

If the goods and/or services of the respective parties are “similar in kind and/or closely related,” as is the case here (wherein the goods at issue are identical/legally identical), the degree of similarity between the marks required to support a finding of likelihood of confusion is not as great as would be required with diverse goods and/or services. *In re J.M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987); *see Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1242, 73 USPQ2d 1350, 1354 (Fed. Cir. 2004); TMEP §1207.01(b).

In light of the above, the trademark examining attorney concludes that potential purchasers of the applicant's and registrant's goods/services are likely to erroneously believe that they emanate from a common source.

Any doubt regarding a likelihood of confusion is resolved in favor of the prior registrant. *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988); TMEP §§1207.01(d)(i).

Accordingly, registration is REFUSED under Trademark Act Section 2(d), 15 U.S.C. §1052(d)

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

## **RESPONSE GUIDELINES**

For this application to proceed toward registration, applicant must explicitly address each refusal and/or requirement raised in this Office action. If the action includes a refusal, applicant may provide arguments and/or evidence as to why the refusal should be withdrawn and the mark should register. Applicant may also have other options for responding to a refusal and should consider such options carefully. To respond to requirements and certain refusal response options, applicant should set forth in writing the required changes or statements and request that the Office enter them into the application record.

Applicant's response must be properly signed by (1) the individual applicant (for joint individual applicants, both must sign) or (2) someone with legal authority to bind a juristic applicant (e.g., a corporate officer or general partner). *See* 37 C.F.R. §§2.62(b), 2.193(a), (e)(2)(ii); TMEP §§611.03(b), 611.06 *et seq.*, 712.01. If applicant retains an attorney, the attorney must sign the response. 37 C.F.R. §2.193(e)(2)(i); TMEP §§611.03(b), 712.01. The individual(s) signing must personally sign or personally enter his/her electronic signature. *See* 37 C.F.R. §2.193(a), (e)(2)(ii); TMEP §§611.01(b), 611.02.

If applicant does not respond to this Office action within six months of the issue/ mailing date, or responds by expressly abandoning the application, the application process will end, the trademark will fail to register, and the application fee will not be refunded. *See* 15 U.S.C. §1062(b); 37 C.F.R. §§2.65(a), 2.68(a), 2.209(a); TMEP §§405.04, 718.01, 718.02. In such case, applicant's only option would be to file a timely petition to revive the application, which, if granted, would allow the application to return to live status. *See* 37 C.F.R. §2.66; TMEP §1714. There is a \$100 fee for such petitions. *See* 37 C.F.R. §§2.6, 2.66(b)(1).

If applicant has questions about the application or this Office action, please telephone the assigned trademark examining attorney at the telephone number below.

/Kevin S. Corwin/  
Trademark Examining Attorney  
Law Office 112  
Phone - (571) 270-1521

**TO RESPOND TO THIS LETTER:** Use the Trademark Electronic Application System (TEAS) response form at <http://teasroa.uspto.gov/roa/>. Please wait 48-72 hours from the issue/ mailing date before using TEAS, to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail [TEAS@uspto.gov](mailto:TEAS@uspto.gov).

**WHO MUST SIGN THE RESPONSE:** It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.



**PERIODICALLY CHECK THE STATUS OF THE APPLICATION:** To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

**TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS:** Use the TEAS form at <http://www.uspto.gov/teas/eTEASpageE.htm>.

**Print: Dec 15, 2010**

**77674890**

**DESIGN MARK**

**Serial Number**

77674890

**Status**

REGISTERED

**Word Mark**

BABY REBELS

**Standard Character Mark**

Yes

**Registration Number**

3811758

**Date Registered**

2010/06/29

**Type of Mark**

TRADEMARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(4) STANDARD CHARACTER MARK

**Owner**

Children's Apparel Network, Ltd. CORPORATION NEW JERSEY 77 South First  
Street Elizabeth NEW JERSEY 07206

**Goods/Services**

Class Status -- ACTIVE. IC 025. US 022 039. G & S: CLOTHING AND  
ACCESSORIES FOR INFANTS, NAMELY, CAPS, CARDIGANS, CREEPERS, DENIM  
JACKETS, HATS, JACKETS, JEANS, JERSEYS, OVERALLS, PANTS, PULLOVERS,  
SHIRTS, SHORTALLS, SHORTS, SOCKS, SWEAT PANTS, SWEAT SHIRTS, SWEATERS,  
T-SHIRTS, TANK-TOPS, VESTS; JACKET SETS COMPRISED OF JACKETS, PANTS  
AND SHIRTS; OVERALL SETS COMPRISED OF OVERALLS AND SHIRTS; SHIRT SETS  
COMPRISED OF SHIRTS AND PANTS; SWEATER SETS COMPRISED OF SWEATERS,  
PANTS AND SHIRTS. First Use: 2009/05/00. First Use In Commerce:  
2009/05/00.

**Disclaimer Statement**

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BABY" APART FROM THE  
MARK AS SHOWN.

**Filing Date**

2009/02/20

**Print: Dec 15, 2010**

**77674890**

**Examining Attorney**  
MURRAY, DAVID

**Attorney of Record**  
Chester Rothstein, Esq.

# BABY REBELS

**Print: Dec 15, 2010**

**77753032**

**DESIGN MARK**

**Serial Number**  
77753032

**Status**  
REGISTERED

**Word Mark**  
SOLE REBELS

**Standard Character Mark**  
Yes

**Registration Number**  
3760329

**Date Registered**  
2010/03/16

**Type of Mark**  
TRADEMARK

**Register**  
PRINCIPAL

**Mark Drawing Code**  
(4) STANDARD CHARACTER MARK

**Owner**  
BOSTEX PLC CORPORATION ETHIOPIA KEBELE 01 HOUSE #754, BOX 21033 ADDIS  
ABABA ETHIOPIA

**Goods/Services**  
Class Status -- ACTIVE. IC 025. US 022 039. G & S: FOOTWEAR.  
First Use: 2005/12/00. First Use In Commerce: 2005/12/00.

**Disclaimer Statement**  
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SOLE" APART FROM THE  
MARK AS SHOWN.

**Filing Date**  
2009/06/05

**Examining Attorney**  
FIRST, VIVIAN MICZNIK

**Attorney of Record**  
TERESA C. TUCKER

# SOLE REBELS

## EXHIBIT J

Int. Cl.: 25

Prior U.S. Cl.: 39

**United States Patent and Trademark Office**

Reg. No. 1,523,581

Registered Feb. 7, 1989

**TRADEMARK  
PRINCIPAL REGISTER**



CRADLE TOGS, INC. (NEW YORK CORPORATION)  
77 SOUTH FIRST STREET  
ELIZABETH, NJ 07206

FOR: BOYS' AND GIRLS' TANK TOPS,  
SPORT SHIRTS, SHORTS, TOP AND SHORT  
SETS, TOP AND BATHING SUIT SETS; BOYS'  
BASEBALL SUITS; GIRLS' TOP AND LEG-

GINGS SETS, ROMPERS, AND TOP AND  
PANTS SETS, IN CLASS 25 (U.S. CL. 39).

FIRST USE 10-20-1987; IN COMMERCE  
10-23-1987.

SER. NO. 703,013, FILED 12-28-1987.

ROBERT C. CLARK JR., EXAMINING ATTOR-  
NEY